

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

DONATO APONTE NAVEDO, et al.  
Plaintiffs  
v.  
NALCO CHEMICAL, INC., et al.  
Defendants

**CIVIL No. 09-01232-JA**

TITLE VII AGE & GENDER DISCRIMINATION,  
ADA, NATIONAL ORIGIN  
TORTS

TRIAL BY JURY

**MOTION TO COMPEL DISCOVERY**

Plaintiffs, Donato Aponte-Navedo and Belkis Isabel Santiago-Martínez, by and through their undersigned counsel, and pursuant to **Local Rule of Civil Procedure 7(b)**, hereby state as follows:

1. On January 11<sup>th</sup>, 2010, Plaintiffs filed Motion to Compel Discovery (**Doc.# 41**) against co-defendant Nalco Chemical, Inc. (**Nalco**).

2. In said motion, Plaintiffs brought to the attention of the Court the detailed factual background, and the current status of the proceedings, in regards to the discovery phase of this litigation.

3. Plaintiffs further cited ample and pervasive legal authority which sufficiently laid out Nalco's discovery

obligations, and their corresponding deficiencies in the current litigation. Plaintiffs specifically expressed concern over Nalco's cavalier attitude in regards to their discovery obligation of Electronically Stored Information (**ESI**).

4. After having had a reasonable chance to challenge Plaintiffs' factual assertions, together with their supporting legal discussion and conclusions, Nalco has chosen not to do so, effectively leaving it up to the Court to decide the merits of Plaintiffs' prayer for relief under **Doc.# 41**.

5. Under **Local Rule of Civil Procedure 7(b)**, a time limit of ten (10) days is set, within which an opposing party must file a written objection to a moving party's motion. Failure to do so, constitutes waiver and effective estoppel against the opposing party from raising the objections in the future. Not only has Nalco failed to follow the local rule, they have also failed to honor the rationale behind it without articulating any objections to **Doc.# 41**.

6. Nalco's failure to file written objection as required by local rule 7(b), waives their right to controvert the facts as asserted by Plaintiffs and the supporting legal authority accompanying them. Accordingly, the Court can deem **Doc.# 41** as unopposed, accept as true its legal basis and material facts, and by granting it, adopt its prayer for relief as a ruling of the Court.

7. A prompt determination of the above by this Honorable Court, will enable it to focus its attention on those issues - factual and legal - that are at the heart of the parties' dispute, in lieu of dedicating its resources to discovery disputes.

**WHEREBY**, for all of the above, Plaintiffs pray this Honorable Court:

Take **NOTICE** of all of the above;

**GRANT** Plaintiffs present motion.

**Respectfully submitted in New York, New York, this 26<sup>th</sup> day of January, 2010.**

S/William Meléndez Menéndez  
William Meléndez Menéndez  
USDC-PR No. 226902

William E. Meléndez | We.Melendez@e-Lex.us  
Cuadros & Cuadros | 701 Ponce de León Ave. Suite 215  
San Juan | Puerto Rico | 00907  
(718)725-7387

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel for defendants and all other parties of interest.

S/William Meléndez Menéndez  
William Meléndez Menéndez